press Co. v. Commonwealth, 92 Va. 66. For such a fundamental proposition I need cite no further authority. * * * What is meant by the provision against cruel and unusual punishment? It is hard to say definitely. Here is something prohibited, and in order to say what this is we must revert to the past to ascertain what is the evil to be remedied. Within the pale of due process the legislature has power to define crimes and fix punishments, great though they may be, limited only by the provision that they shall not be cruel or unusual or disproportionate to the character of the offense. Going back to ascertain what was intended by this constitutional provision the history of the law tells us of the terrible punishment visited by the ancient law upon convict criminals. In our days of advanced christianity and civilization this review is most interesting yet shocking and heart-rending."

The learned jurist then proceeds with the narration of the cruel punishments mentioned in 4 *Blackstone,* at pages 92, 327 and 377, and after citing and discussing the English Bill of Rights; *Whitten v. State,* 47 Ga. 301; *Aldridge Case,* 2 Va. Cases, 447; *Wyatt's Case,* 6 Rand 694; *In re Kemmler,* 136 U. S. 436, 446; *Wilkerson v. Utah,* 99 U. S. 130, 135; Cooley, Const. Lim. (4th ed.), 408; Wharton, Crim. Law (7th ed.), Section 3405; *Hobbs v. State,* 133 Ind. 404, 32 N. E. 1019, 18 L. R. A. 774; *State v. Williams,* 77 Mo. 310; *Weems v. United States,* 217 U. S. 349; *O'Neil v. Vermont,* 144 U. S. 323; and other cases says:

"In short the text writers and cases say that the clause is aimed at those ancient punishments, those horrible, inhuman, barbarous inflictions."

In *In re O'Shea,* 11 Cal. App. 568, 105 Pac. 777, the California court of appeals for the first district said:

"Cruel and unusual punishments are punishments of a barbarous character and unknown to the common law. The word, when it first found place in the Bill of Rights, meant not a fine or imprisonment, or both, but such punishment as that inflicted by the whipping post, the pillory, burning at the stake, breaking on the wheel, and the like; or quartering the culprit, cutting off his nose, ears or limbs, or strangling him to death. It was such severe, cruel and unusual punishments as disgraced the civilization of former ages and made one shudder with horror to read of them. Cooley on Constitutional Limitations (7th ed.), p. 471, *et seq.; State v. McCauley,* 15 Cal. 429; *Whitten v. State,* 133 Ind. 404, 32 N. E. 1019; *State v. Williams,* 77 Mo. 310. 'The legislature is ordinarily the judge of the expediency of creating new crimes, and prescribing the punishment, whether light or severe.' *Commonwealth v. Murphy,* 165 Mass. 66, 42 N. E. 504, 52 Am. St. Rep. 496, 30 L. R. A. 734; *Southern Express Co. v. Com.,* 92 Va. 59, 22 S. E. 809, 41 L. R. A., 436."

Guided by the rule that, in the matter of penalties for criminal offenses, the courts will not disturb the discretion of the legislature save in extreme cases, we cannot hold that vasectomy is such a cruel punishment as cannot be inflicted upon appellant for the horrible and brutal crime of which he has been convicted.

The judgment is affirmed. Parker, Chadwick, and Gose, JJ., concur.

From STEVENSON SMITH, Seattle.

Criminal Attempts.—In a pamphlet with the above title W. H. Hitchler called attention to the difficulties encountered in formulating a proper definition of an attempt. Mr. Hitchler finds no satisfactory definition of an attempt in the books. In its essential elements an attempt consists of a criminal intent and a criminal act. The criminal act is composed of a physical and a mental element.

The mental element may be called the specific intent, that which denotes the purpose towards the accomplishment of which the act is directed and which is an essential element of the criminal act, as distinguished from the criminal intent, that is the intention to produce a result which, if accomplished, would constitute a crime, which is concurrent with but not contained in the criminal act. An attempt is to be distinguished from a solicitation and from a conspiracy. If a person be solicited by another to commit a crime and the person solicited refuses, the solicitor is guilty of a solicitation; if he consents, both persons are guilty of a conspiracy; in neither case is either party guilty of an attempt. In order to constitute an attempt there must be an act sufficiently proximate to the intended result. Not every act committed in furtherance of a design to commit a crime is an attempt. Thus if A, intending to poison B, should procure poison with which to do it a year before the contemplated poisoning he would not be guilty of an attempt to kill. One of the chief difficulties in the law of attempts is in determining the relation which the act done must sustain to the intended offense. Usually the word "proximate" has been used in defining this relation. Thus it has been said that the act done "must be proximate and not remote," and that it "must proximately lead to the commission of the crime." Mr. Hitchler illustrates the nicety of the distinctions involved by the following series of Pennsylvania cases on attempts to commit burglary: "X, intending to commit burglary, procures a complete set of burglar implements; he is not guilty of an attempt. He meets a confederate at a distance from the house; he is not guilty. He arrives in front of the house and watches it; he is not guilty. He prepares some of his implements; he is not guilty. He breaks the gate of the yard; he is guilty. He enters the yard without breaking the gate; he is not guilty. He hides in the barn; he is not guilty. He assaults the owner in the yard; he is guilty. He goes upon the steps; he is guilty. He inserts key in lock or places a ladder against the window; he is guilty. He removes moulding or breaks transom; he is guilty." The numerous cases cited and examined show the efforts of the courts to attain precision with respect to an inherently difficult subject matter. E. L.

COURTS—LAWS.

Law Governing Domestic Relations in Indiana.—*Acts of 1907, page 160, Chapter 105. (Indiana). Approved March 5, 1907.* AN ACT to provide for the punishment of the parents of children who abandom them or neglect or refuse to provide proper home, care, food and clothing for them, and to provide for the application of the wages, income or earnings of such persons abandoning such child or children, and giving the court authority to order and direct the payment of the same for the support of such child or children, providing for the expense of extradition of and the production of the accused, and declaring an emergency.

CHILD DESERTION—FAILURE TO SUPPORT—PENALTY.

Section 1. Be it enacted by the General Assembly of the State of Indiana, That the father, or when charged by law with the maintenance thereof, the mother of a child or children under fourteen years of age living in this state, who being able either by reason of having means or by personal services, labor or earnings shall willfully neglect or refuse to provide such child or children with necessary and proper home, care, food and clothing, shall be deemed guilty